

Recent key developments in the area of Spanish financial regulation

Prepared by the Regulation and Research Department of the Spanish Confederation of Savings Banks (CECA)

Royal Decree-law 6/2024, of 5 November 2024, implementing urgent measures in response to the damage caused in different municipalities by the flash floods between 28 October and 4 November 2024 (Official State Gazette: 6 November 2024)

The following measures of financial relevance stand out:

1. Guarantee line. Provision of guarantees for financing provided by banks and specialised lending institutions to households, corporations and self-employed professionals to cover the damage caused by the flash floods from 29 October 2024. The guarantees will be managed by Spain's Corporate State-owned Entity, the ICO. The scheme has a limit of 5 billion euros and runs until 31 December 2025.
2. Moratorium. The legislation regulates the suspension of interest and principal payment obligations on loans and credit facilities, irrespective of whether the borrowers are current on those payments, with or without mortgage collateral, granted to parties affected by the flash floods in any of the municipalities affected. The main characteristics are as follows:
 - The following loans and credit facilities are eligible for the suspension of interest and principal payments:
 - (i) loans secured by mortgages over properties located in any of the affected towns: natural and legal persons with income of under 6 million euros in the last full year; or
 - (ii) unsecured loans: natural persons resident in the affected area and self-employed workers and legal persons with income of under 6 million euros in the last full year

whose main business activity is located in an affected area.

- To certify eligibility, the application is all that is required in the case of mortgaged transactions; if it is not available, natural persons need to present a census certificate and self-employed workers and legal persons need to present any document certifying their eligibility along with an affidavit. There is a penalty regime in the event a borrower is found to have benefitted from the measures without having been eligible to do so.
- The moratorium consists of the suspension of the debt (principal and interest) for three months, including any debt past due. After the first three months, the moratorium on principal payments will be extended for a further nine months.
- Borrowers can apply for a moratorium within the three months following effectiveness of the Royal Decree-law.
- Once the suspension has been applied for, the creditor must proceed to suspend the borrower's obligations under the loan or credit agreement and notify the Bank of Spain of the suspension. Effectiveness of the suspension does not require an agreement or any contractual amendment between the parties.

In the event of mortgaged loans, the suspension must be placed on public record and registered. If the credit or loan is secured by a registrable claim other than a mortgage or arranged under the so-called movable property instalment sales register, extension of

the repayment term does have to be registered.

- The provisions relating to the moratorium scheme will have the status of organisational and conduct standards and the lenders will be required to report to the Bank of Spain monthly.
- Acknowledgement of application of the suspension of mortgage debt will not be bound by the provisions of Spanish Law 5/2019 (of 15 March 2019) governing real estate credit agreements and the lender may unilaterally: (i) place acknowledgement of the suspension on public record; and (ii) bring about the official recording of the policy or public deed in which acknowledgement of the suspension is documented and its registration, if warranted, in the Property Register, so long as the loan or credit were secured by some form of registrable claim other than a mortgage or had been entered into the Register.

Royal Decree-law 7/2024, of 11 November 2024, implementing urgent measures for propelling the Immediate Response, Reconstruction and Revitalisation Plan in response to the damage caused in different municipalities by the flash floods between 28 October and 4 November 2024 (Official State Gazette: 12 November 2024)

The following financial measures stand out:

1. Modification of the Code of Good Practices. Royal Decree-law 19/2022 has been amended to extend the Code's duration, generally from 24 to 36 months. In the case of natural persons resident in an affected town, it is being extended to 42 months.

If the application is made during the period of suspension of interest and principal payment obligations for mortgaged loans and credit lines contemplated in Royal Decree-law 6/2024,

the entity must apply the measures set down in the Code after the end of the nine-month moratorium on principal payments.

2. Exceptional access to vested pension plan rights. Pension plan beneficiaries affected by the flash floods are allowed to avail of their vested rights during a six-month period starting from effectiveness of the Royal Decree-law.

There is a ceiling on drawdown per holder, specifically the result of apportioning the annual rate of IPREM (acronym in Spanish for the public income index) for 12 payments in force for 2024, multiplied by three, over a maximum period of six months from the date of effectiveness of the Royal Decree-law.

The management company must make the reimbursement within a deadline of seven days from when the holder presents all the required supporting documentation. In the event of occupational pension plans, that deadline increases to 30 working days and in the case of occupational pension plans that are defined benefit or mixed for contingencies defined in the defined benefit regime or related thereto, the early drawdown provision will only be applicable when the pension commitment so allows and it is contemplated specifically in the plan rules.

3. Amendment of Royal Decree-law 6/2024. Notably:

- Guarantee line: amendment of the requirement to be resident in any of the towns affected, substituting that requirement with that of being registered there for census purposes or having one's place of work, regular or sporadic residence, registered office or industrial, commercial or services establishment in any of those towns. The new wording adds that corporations and self-employed professionals whose means of transport used for business or professional purposes has been

damaged by the flooding may also apply for the guarantee line.

- **Novation of secured financing transactions:** secured financing transactions can be novated without losing the guarantee when the reason for the novation is to increase the amount of financing when households, corporations or self-employed professionals have applied for new aid under the programmes approved by the competent authorities and that aid is arranged with a financial guarantee. The lenders may unilaterally bring about the official recording of the policy documenting the novation carried out.
- **Scope of application of the moratorium:** stipulation that (i) in working capital financing facilities, a grace period or suspension of reclamation rights will apply for 12 months from the application, leaving the facilities operational on their usual terms and conditions; and (ii) in interest-bearing consumer credit loans with an indefinite term or a defined term that can be extended, the suspension will apply to the balance drawn down as of the date of publication of the Royal Decree-law.
- **Concession of moratorium:** the amended wording adds that the guarantees securing loans whose principal and interest is suspended will remain unaltered until the end of the extension period.
- **Effects of the moratorium:** the amended wording adds that after the first three months of suspension, any late-payment interest accrued will become enforceable. It also adds that accrual by the lenders of the commission on the ICO guarantee facility will be suspended for borrowers that apply for this measure during this period for the loans extended with respect to the ICO COVID and ICO UKRAINE guarantee lines.

Royal Decree-law 8/2024, of 11 November 2024, implementing complementary measures under the scope of the Immediate Response, Reconstruction and Revitalisation Plan in response to the damage caused in different municipalities by the flash floods between 28 October and 4 November 2024 (Official State Gazette: 29 November 2024)

Among other matters, this piece of legislation amends Royal Decree-law 6/2024 to include a specific tranche in the already-contemplated ICO guarantee line of up to 240 million euros specifically for self-employed professionals and industrial or commercial businesses with two aims: (i) guaranteeing affected SMEs the financing they need to ensure they have sufficient working capital to cover their operating cycle; and (ii) guaranteeing affected self-employed professionals the financing they need to ensure they have sufficient working capital to cover their operating cycle and to upgrade their assets or make other investments so as to be able to extend, improve or diversify damaged establishments or improve their production process in general. The interest generated on the guaranteed financing extended under this tranche may be subsidised in full. The specific terms and conditions applicable to this tranche and any interest subsidies will be established via a resolution by the Spanish Cabinet. The subsidy will be awarded strictly on a first come, first served basis.

Royal Decree-law 9/2024, of 23 December 2024, implementing urgent measures in economic, tax, transport and social security matters, extending certain measures introduced to address situations of social vulnerability (Official State Gazette: 24 December 2024)

The following measures stand out along the economic and social dimensions:

- **Extension of the temporary regime** suspending the deregulation of certain direct foreign investments by residents of other EU Member States.

- Adjustment of pensions and other public benefits for 2025.
- Extension until 31 December 2025 of the tax relief for works carried out to make residences more energy efficient.
- Introduction of specifications to the legal regime applicable to concession agreements for the development of social or affordable housing on land or in buildings under public ownership.
- Extension until 31 December 2025 of the suspension of eviction proceedings and foreclosures for financial vulnerable persons and extension of the deadline for landlords and owners to apply for compensation until 31 January 2026.
- Introduction of a new window for applying for the moratorium on principal and interest payment obligations for secured and unsecured loans or credit extended to people affected by the volcanoes in La Palma Island.
- Establishment of other support measures for groups affected by the volcanic eruptions in La Palma Island, the flash flooding and to other regions of Spain.

Royal Decree 1101/2024, of 29 October 2024, enacting the Statute of the Independent Whistleblower Protection Authority (Official State Gazette: 30 October 2024)

The reason for Royal Decree 1101/2024 is to implement the Statute contemplated in Law 2/2023, of 20 February 2023, regulating the protection of persons who report breaches of the law and the fight against corruption. It took effect the day after its publication.

Broadly, the Statute regulates the following aspects:

- Nature. It is an independent administrative authority at the state level with its own legal personality and full public and private capacity to act. It will act autonomously and independently, organically and functionally, of the government, the entities comprising

the public sector, the public powers and any other public or private entity in the course of carrying out its duties.

- Purpose. Guaranteeing the protection of whistleblowers and serving as an essential institutional pillar in the fight against corruption, acting in coordination with other organisations and authorities with similar functions.
- Functions. The following stand out: (i) processing the reports and notifications received via the external channel; (ii) implementing measures to protect and support the whistleblower; (iii) initiating, hearing and ruling on disciplinary proceedings; and (iv) establishing cooperative relations and formulating proposals for action with other organisations with similar functions. In contrast, it cannot carry out the tasks within the remit of a judge or competent court, the public prosecutor's office or the judicial policy, nor may it investigate the matters those bodies are investigating.
- Structure. It is made up of the following bodies: Presidency and Whistleblower Protection Advisory Committee.
- Economic regime. The authority will draw its funding from: (i) the appropriations made with a charge against the general state budget; (ii) the goods and rights that constitute its assets and the output and income derived therefrom; (iii) the percentage determined by law (the budget act) of the amounts collected as a result of financial penalties imposed by the authority itself in the course of exercising its disciplinary powers; and (iv) any other sources that may be attributed to it.

CNMV Circular 1/2024, of 17 December 2024, repealing Circular 1/2022, of 10 January 2022, on the advertising of crypto-assets presented as an investment opportunity (Official State Gazette: 27 December 2022)

The Markets in Crypto-Assets (MiCA) Regulation does not contain an express

reference to national law; nor does it grant the Member States discretionary powers to implement provisions regarding the advertising of crypto-assets, so that it is not compatible to maintain a national regulation governing aspects that are regulated at the European level. Therefore, the CNMV has proceeded to repeal Circular 1/2022.